

Chris Tweeten 06/21/2012

Remember the whole point of the negotiations in the first place, is to get these tribal rights included in the decree, in the water court, without having to go to court, to the judge and conduct expensive and extensive litigation of the tribal right. Now I say expensive and extensive not because I'm trying to frighten anybody, but because history shows that litigation of tribal reserved rights is an extraordinarily time consuming and expensive process in which not only the governments are involved, but all the water users in the basins are involved as well because those of you who raised your hands indicating you had a water right that's been filed in adjudication are parties to the adjudication just as though you've been sued by your neighbor because you ran over your neighbors fence. You're a party to that litigation on the water board, and if you want to protect your water right, in the water court, from the assertion of the tribe's 1855 or time immemorial priority date, you will have to hire a lawyer and go to court, or go to court on your own without a lawyer, and trust your own legal skills whatever they might be, to defend, to protect the water right on which your family's livelihood may depend. So the consequence of not reaching a compact, and letting these matters go to the water court, is that each and every one of you that holds a water right that's filed in front of the water court, is going to have to make some very difficult decisions about what you plan to do to protect that water right when that goes for examination in front of the Montana water court. Now there are lots of arguments that can be made both pro and con with respect to the question about whether the tribe has reserved water rights and what it is, many of them are very, very technical legal questions about whether this tribe in particular has a water right that extends off the reservation, and so forth, and experienced lawyers, I think are required in order to make sense of the presentations of those complicated legal issues in front of the water board. So it's not I think, an outlandish idea to suggest, that if we don't compact, if we don't settle them out of court, then you will face a very difficult decision with respect to how you can afford to hire the legal help that you would need to protect your water right when it goes to litigation under the water court.

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/S/ JIM RICE

PREAMBLE: A LAWYER'S RESPONSIBILITIES

(1) A lawyer shall always pursue the truth.

(2) A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

(3) As a representative of clients, a lawyer performs various functions. In performance of any functions a lawyer shall behave consistently with the requirements of honest dealings with others. As advisor, a lawyer endeavors to provide a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer asserts the client's position under the rules of the adversary system.

~~As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them.~~ As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them.

(4) In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.3. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

(5) In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

(6) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs.

~~A lawyer should not use the law to harass, intimidate or oppress others.~~ A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

(7) As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. ~~In addition, a lawyer should further the public understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.~~ A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot

afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(8) Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

(9) A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are harmonious. A lawyer can be a dedicated advocate on behalf of a client, even an unpopular one, but in doing so must comply with these Rules of Professional Conduct. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

(10) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

(11) The legal profession is self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested in the courts.

(12) Self-regulation helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

(13) The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these



Open Meeting Act

Purpose:

It is important to understand what is required to meet the Open Meeting Law for Montana Conservation Districts. There are certain requirements set in statute that districts need to follow when conducting meetings, board meetings, team inspections etc. Proper protocol must be followed when conducting business meetings.

What's considered a Meeting?

A "meeting" means the convening of a quorum of the supervisors described in MCA 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the district has supervision, control, jurisdiction, or advisory power.

However, the Act is broad enough to include any informal gathering where there may be a majority of supervisors present, which constitutes a quorum, conducting business. As such, it is considered a meeting and must be **open** and **noticed**

Open Meetings:

According to Montana statute ~~Montana 2-3-201~~, all meetings are to be Open to the public. The legislature finds and declares that public boards, ~~commissions~~, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business.

It is the intent of this part [statute] that ~~all~~ **tions and deliberations of all public agencies** [conservation districts] **shall be conducted** ~~openly~~ MCA 2-3-201

Notice of Meeting:

~~All meetings need to be noticed~~ The notice should clearly state the date, the time, and the place of the meeting. DNRC recommends consistency is the key. If your district posts a meeting notice, it should be done at least ~~72 hours prior to regular~~ meetings and at least 24 hours for special meetings. It should be posted in the same place each time/

month. If your district notices it in the paper, on a website, or elsewhere, it should be done consistently as well.

The failure to give notice can result in the actions of the Board being voided. MCA 2-3-213

So, any time supervisors get together to conduct business such as board meetings, 310 inspections, annual/long range planning sessions etc. and there is a quorum (including those on a conference call), these meetings must be open to the public (with 310 team inspections, anyone [public] besides the team members must obtain permission from the landowner prior to accessing private land. This can pose an issue if additional supervisors attend for either training or just to look at the project. If so, just notice it normally.

Closed Meetings/Executive Session: There are few situations where a meeting may be closed according to statute (MCA 2-3-203). The Chair may close the board meeting to discuss:

- Personnel matters, such as discussion of salaries, evaluations of employees, disciplinary actions, and/or discussions of pending legal problems
- Matters of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

Waiving of rights: If a meeting is to be closed to discuss private matters, the individual who the meeting is being closed over may waive their individual privacy rights. If they do, then the meeting must be open. MCA 2-3-203(3)

- A strategy to be followed with respect to litigation when an